Polen Mortgage & Realty, co.

commercial mortgage & real estate services

DOCKET FILE COPY ORIGINAL

August 20, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W. - TW-A325
Washington, D.C. 20554

Re: Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No 96-98

Dear Ms. Salas:

I am writing in respect to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings. I have enclosed six (6) copies of this letter, in addition to the original.

I believe that, if enacted, the actions proposed by the FCC will effect a taking of my and my property owners property without just compensation. Such actions will not only interfere with my and my clients business operations and give my property and my clients property to large and wealthy telecommunications firms, such actions will unnecessarily and unfairly hurt my and my clients business, place the residents at a competitive disadvantage for the purchase of telecommunications services, and needlessly raise additional legal problems as a result of this unprecedented government action.

My company, Polen Mortgage & Realty is in the business of providing rental multifamily homes in various communities in southeast Michigan area. We manage and have managed over 2,500 apartment units.

I am shocked by the proposed rule. It seeks to give a permanent easement to any telecommunications provider that has an interest in selling services to our tenants without my or my clients consent. It purports to do this in the name of consumer protection, hoping to provide less expensive services to tenants through a system you have called "non-discriminatory access". I believe this practice is misguided, is unnecessary, and will harm the residents in my and my clients properties.

First, let me assure you that my company is doing everything it can to meet our tenants' needs and demands for access to a wide range of telecommunications services. Ours is an extremely competitive industry. We compete with other multifamily properties in every community in which our properties are located. In addition to competing on unit size, location and lay-out, one of the primary areas of competition is the set of amenities we can provide to our tenants. One of the most important of these is telecommunication services.

In each of the properties, in each market in which we are located, my company studies the market, analyzes the best package of telecommunications services available, determines what our tenants want and negotiates vigorously with providers of these services. If tenants with month-to-month

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or one year tenancies are forced to negotiate directly with national or international telecommunications firms they will be at a decided disadvantage. My company has the negotiating strength afforded one who represents thousands of tenants. No individual can strike as good a deal as we can in this collective manner.

Furthermore, once a telecommunications firm has entered and wired one of our buildings, other providers may be less interested in incurring the cost to compete. Thus, it is likely that one or more of the large firms will obtain an effective monopoly on providing services to our tenants at what will be far from an arms-length, negotiated rate. We have all seen what has happened to cable TV rates where cable TV companies have acquired monopolies in communities across the country as ComCast has in our area. Is it necessary to create such a system when we already have the incentive to negotiate for, and provide the most effective, extensive and competitive set of services in our competitive business?

I must note that the proposed rule raises the following additional concerns: it would expand the scope of existing easements; it would interfere with existing exclusive contracts; it may expand the satellite dish rules to include non-video services; expand the liability of the property owners liability exposure for the work and service provided by the telecommunications providers; possibility of personal injury to tenants, visitors and service workers because of the equipment to be installed by the telecommunications providers.

My company had a local cable TV provider install their wires throughout the cold air metal returns and left many of the metal strap connections opened which reduced the efficiency of the heat and air conditioning to the tenants. A tenant accidentally hurt herself by catching her arms on one of the cold air return straps that was not sealed properly by the cable TV provider which then resulted in a un-needed law suite because the cable TV provider denied they left the cold air return unsealed properly.

We had another cable TV provider install, on the hallway walls at about 5feet from the floor of an apartment complex, their wires and black equipment that projected into the hallway and was a safety obstruction to tenants, visitors and workmen.

We have exclusive contracts with telecommunication providers at present time and this law would negate that exclusive contract as I understand the rule. Why does some government agency have the authority to negate a contract that my property owners have enter into in good faith?

Building owners must have control over space occupied by telecommunications providers, especially when there are multiple providers involved. This control is to protect the tenants and to protect the integrity of the building itself as well as its appearance.

Building owners must have control over who enters their buildings; owners face liability for damage to building, leased premises, and facilities of other providers; and for personal injury to tenants and others. Owners are also liable for safety code violations by various government agencies. Qualifications and reliability of providers are a real issue.

What does "nondiscriminatory" mean? Deal terms vary because each deal is different. A company without a track record poses greater risks than an established one, for example, so indemnity, insurance, security deposit, remedies and other terms may differ. Value of space and other terms also depends on many factors.

Building owners often have no control over terms of access for Bell companies and other incumbents; they were established in a monopoly environment. Only fair solution is to let the new

competitive market decide and allow owners to renegotiate terms of all contracts. Owners can't be forced to apply old contracts as lowest common denominator when owner had no real choice.

The FCC **cannot and should not** expand the scope of easements already provided to existing telecommunications providers to allow every competitor to use the same easement or right-of-way. Grants in some buildings may be broad enough to allow other providers in, but others are narrow and limited to facilities owned by the grantee.

If owners had known governments would allow companies to piggy-back, they would have negotiated different terms. **Expanding rights now would be a "taking of private property rights" which has been against public policy.**

I oppose the existing rule because I do not believe that Congress meant to interfere with our ability to own and manage our properties. The FCC **should not** expand the satellite rule to include data and other services, because the law only applies to antennas used to receive video programming.

In summary, I am very much opposed to the proposed rule and urge the FCC to refrain from issuing it in final form. Thank you for your consideration of my views.

Sincerely,

Robert M. Blick
President

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